NG KOK WAH

v.

UMW INDUSTRIES (1985) SDN. BHD.

HIGH COURT MALAYA, IPOH
DATO' P.S. GILL J
[IN BANKRUPTACY [PERAK] NO. 6 OF 1984]
19 JANUARY 1995

BANKRUPTCY: *Appeal against dismissal of application for discharge as a bankrupt - Appellant guarantor for loan - Bankrupt for 8 years - Report of good conduct by Official Assignee - No objection from major creditor - Application opposed by respondent - Whether Court should allow absolute or conditional discharge or refuse application.*

This was an appeal against an order of the learned Senior Assistant Registrar (SAR) dismissing the appellant's application to be discharged as a bankrupt under s. 33 of the Bankruptcy Act 1967 (the Act).

The appellant was adjudicated bankrupt on 8 July 1985 on the petition of Messrs. Hong Leong Finance Bhd (the bank) upon his failure, as a guarantor, to pay a debt of RM42,195.92 which was due to the bank from his father's company. A public examination was held and the appellant was ordered to pay RM50 per month with effect from 1 January 1990. According to the Official Assignee's report, the appellant's conduct during the bankruptcy proceedings was satisfactory and he had not committed any offence under the Act. Furthermore, during his 8 years as a bankrupt, the appellant had been gainfully employed and had dutifully paid the RM50 per month. The major creditor, the bank, had no objections to the application. However, the respondent opposed the application on the ground that a dividend of only 9.03%, equivalent to RM5,951, was to be paid to it. Respondent's Counsel submitted that the appellant had not made any attempt to redeem his position by his own efforts but had depended entirely on a third party who had deposited RM30,000 with the Official Assignee to satisfy the creditors, which sum was to be refunded in the event the discharge was refused by the Court.

Held:

A sizeable amount was still owed to the opposing creditor but having considered all the circumstances of this case, the order of the learned SAR is set aside and a conditional discharge is granted subject to the appellant consenting to a judgment being entered against him by the Official Assignee for the sum of RM27,000 being the balance of the debt provable in bankruptcy which is unsatisfied at the date of his discharge. With this conditional discharge, the Official Assignee is at liberty to proceed and realise the amount owing by the appellant to the creditors subject to the consent of the Court in the event the appellant acquires property or income after the conditional discharge.

[Conditional discharge granted].

Case referred to:
Re Tan Yoke Hwee exparte Hagemeyer ***(dist)***

Legislation referred to:
Bankruptcy Act 1967, s. 33
Penal Code, ss. 421, 422, 423 & 424

For the appellant - G. Ramanaidhu; M/s. R. Naidhu & Co.
For the respondent - Trevor Padasian; M/s. Skrine & Co.

JUDGMENT

P.S. Gill J:

This case involves an appeal by the bankrupt against an order of the learned Senior Assistant Registrar who dismissed his application to be discharged as a bankrupt under s. 33 of the Bankruptcy Act 1967. The appellant was adjudicated a bankrupt on 8 July 1985, on the petition of Messrs. Hong Leong Finance Bhd. for a debt of RM42,195.92. He was made a bankrupt on account of his failure to pay a debt due to Messrs. Hong Leong Finance Bhd. by Ng Cheng Yoon Tin Mines Sdn. Bhd. The appellant had stood as a guarantor for Messrs. Ng Cheng Yoon Tin Mines Sdn. Bhd. in regard to the purchase of one Sumitomo Link Belt Hydraulic Excavator from the Hong Leong Finance. There was a proof of debt dated 30 August 1989 filed by UMW Industries for the sum of RM77,131.18 with the Official Assignee.

A public examination of the appellant was held and concluded on 23 November 1989. At the said public examination, the appellant was ordered to pay RM50 with effect from 1 January 1990. He stated that the reason that he was made a bankrupt, was due to his being a guarantor, towards various loans granted to his father's company by the creditors, for the purchase of machinery. These purchases were made during the boom period of the tin industry.

At the hearing of the appeal. Mr. Trevor Padasian appeared on behalf of the respondent. He opposed the appeal on the grounds that a dividend of only 9.03% equivalent to RM5,951 was to be paid to his client. Further, he submitted that, the appellant had not made any attempt to redeem his position by his own efforts. Instead, he had depended entirely on a third party who had deposited a total sum of RM30,000 with the Official Assignee to satisfy the creditors, of which sum is to be refunded in the event that the discharge of the appellant is refused by this Honourable Court.

The report of the Official Assignee [encl. 49] dated 23 June 1994, sets out briefly the true position of the affairs of the appellant for the purpose of this application. According to the said report, the appellant has not committed any offence under the Bankruptcy Act, 1967 or ss. 421, 422, 423 and 424 of the Penal Code.

The appellant's conduct during the bankruptcy proceedings had been satisfactory. The appellant is forty-six (46) years of age and works on a vegetable plot earning an income of not exceeding RM700 per month. He is supporting his wife and four children. His wife is not working. The representative of the Official Assignee has confirmed that the major creditor Hong Leong Finance has no objection to the said application of discharge by the said appellant.

Having considered the report of the Official Assignee and the submissions of the Counsel for the respondent, the question which I have to determine is whether or not in the circumstances of the present case. I should exercise my discretion to allow an absolute discharge, a conditional order of discharge or, to refuse the said application. It is not disputed that the appellant has been a bankrupt for 8 years. During this period of 8 years, the appellant had been gainfully employed as a vegetable grower earning an income not exceeding RM700 per month. From the report of the Official Assignee, it is evident that dividends are to be paid to both the creditors. The appellant has been dutifully making payment of RM50 per mensem towards the said debt as ordered by this Honourable Court. I could not also overlook the fact that the major creditor, *viz-a-viz*, Hong Leong Finance, had not in anyway resisted this application. The Official Assignee in her report states that the appellant's conduct during

the bankruptcy proceeding has been satisfactory and that he has not committed any offence under the Bankruptcy Act, 1967. From the facts it is clear that the appellant had redeemed himself by obtaining employment and making payment of RM50 per mensem. The facts in this case are distinguishable from the facts of the case referred to the Court by Counsel *Re Tan Yoke Hwee exparte Hagemeyer*. In that case no dividend had been paid, and no attempt had been made by the bankrupt to redeem his position by his own efforts by gaining employment.

Although a sizeable amount was still being owed to the opposing creditor, bearing in mind and having considered all the circumstances of this case. I set aside the order of the learned Senior Assistant Registrar dated 29 June 1994 and instead granted a conditional discharge, subject to the appellant consenting to the judgment being entered against him by the Official Assignee, for the sum of RM27,000, being the balance of the debts provable in the bankruptcy which is not satisfied at the date of his discharge. With this conditional discharge, the Official Assignee is at liberty to proceed and realise the amount owing by the appellant to the creditors subject to the consent of the Court in the event the appellant acquires property or income after the conditional discharge.